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ALEXANDER L. STEVAS,
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NO. 82-6699

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

CATHERINE DUERR :

Petitioner :

vs. :

THE STATE OF OHIO :

Respondent :

REPLY BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. DOES THE MERE FACT THAT SOME POTENTIAL JURORS ARE AWARE OF THE NATURE OF THE CASE AND THAT SOME POTENTIAL JURORS ARE AWARE OF THE VERDICTS IN A CO-DEFENDANT'S CASE, DISQUALIFY THOSE JURORS FROM SERVING, WHERE THE VOIR DIRE PROCESS REVEALS THAT ALL SEATED JURORS CAN SERVE IN A FAIR AND IMPARTIAL MANNER?

II. WHETHER A CONFESSION IS ADMISSIBLE IN EVIDENCE WHERE THE FOLLOWING FACTORS ARE PRESENT; THE DEFENDANT HAS BEEN ADVISED OF HER MIRANDA RIGHTS THREE TIMES AND HAS SIGNED A WRITTEN WAIVER THEREOF, THE DEFENDANT NEVER REQUESTS COUNSEL, THE DEFENDANT IS COURTEOUSLY TREATED AT ALL TIMES, THE DEFENDANT IS ACCOMPANIED BY ACQUAINTANCES, IS FED AND GIVEN FREEDOM OF MOVEMENT, AND THE DEFENDANT WAS VOLUNTARILY PRESENT AT THE POLICE STATION TO COOPERATE WITH POLICE, WHO ORIGINALLY DID NOT CONSIDER HER A SUSPECT?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	1
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
OPINIONS AND JUDGMENTS IN LOWER COURTS	1
JURISDICTION	1
CONSTITUTIONAL PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	2,3,4, 5,6,7
ARGUMENT ON REASONS FOR DENYING WRIT	8
I THE FACT THAT POTENTIAL JURORS ARE AWARE OF THE NATURE OF THE CASE, AND THAT SOME ARE AWARE OF VERDICTS IN A CO-DEFENDANT'S CASE, DOES NOT DISQUALIFY THEM FROM JURY SERVICE. THE TEST FOR A CHANGE OF VENUE REMAINS THE ABILITY TO SEAT A FAIR AND IMPARTIAL JURY.	8,9
II WHERE THE RECORD DEMONSTRATES SCRUPULOUS POLICE ADHERENCE TO THE MIRANDA RIGHTS, AND FURTHER SHOWS THAT THE DEFENDANT WAS COURTEOUSLY TREATED AT ALL TIMES, THAT QUESTIONING WAS IN A NON-COERCIVE ATMOSPHERE, AND THAT WHILE AT THE POLICE STATION THE DEFENDANT WAS ACCOMPANIED BY HER MOTHER AND BOYFRIEND, THAT SHE WAS FED AND RETAINED FREEDOM OF MOVEMENT, THE ENSUING CONFESSION IS PROPERLY ADMITTED AT TRIAL.	10,11, 12,13, 14,15
CONCLUSION	15

TABLE OF AUTHORITIES

	Page
CASES:	
Burks v. United States, 437 U.S. 1, 98 S. Ct. 2141 (1978)	10
Dobbert v. Florida, 432 U.S. 282, 97 S. Ct. 2290 (1977)	8,9,15
Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602 (1966)	10
Murphy v. Florida, 432 U.S. 794, 95 S. Ct. 2031 (1975)	8,15
Oregon v. Mathiason, 429 U.S. 492, 97 S. Ct. 711 (1977)	12
Sheppard v. Maxwell, 384 U.S. 333, 86 S. Ct. 1507 (1966)	9
State v. Antill, 176 O.S. 61, 197 N.E. 2d 548 (1964)	10
State v. Barker, 53 O.S. 2d 135, 372 N.E. 2d 1324 (1978)	12
State v. Bayless, 48 O.S. 2d 73, 357 N.E. 2d 1035 (1976)	9
State v. Fairbanks, 32 O.S. 2d 34, 389 N.E. 2d 352 (1972)	9
State v. Osborne, 50 O.S. 2d 211, 364 N.E. 2d 216 (1977)	9
State v. Petro, 148 O.S. 463, 76 N.E. 2d 355 (1947)	10
State v. Wilson, 30 O.S. 2d 199, 283 N.E. 2d 632 (1972)	
Watts v. Indiana, 338 U.S. 49, 69 S. Ct. 1347 (1949)	13
CONSTITUTIONAL AUTHORITY:	
28 United States Constitution, Section 1257(3)	1
RULES:	
Criminal Rule 24, Trial Jurors	8

OPINIONS AND JUDGMENTS IN LOWER COURTS

The decision of the Ohio First District Court of Appeals is accurately set forth in the brief of petitioner. The decision of the Ohio Supreme Court refusing review of this case, released March 9, 1983, is accurately set forth in petitioner's brief.

JURISDICTION

Petitioner's claim of jurisdiction is founded on 28 U.S.C. 1257 (3), and petitioner's claims involve an allegation of denial of constitutional rights.

CONSTITUTIONAL PROVISIONS INVOLVED

FIFTH AMENDMENT, UNITED STATES CONSTITUTION:

> No person. . . shall be compelled in a criminal case to be a witness against himself, . . .

SIXTH AMENDMENT, UNITED STATES CONSTITUTION:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . to be confronted with the witnesses against him; . . . and to have the Assistance of Counsel for his defense.

FOURTEENTH AMENDMENT, UNITED STATES CONSTITUTION:

> Section 1. . . . No state shall . . . deprive any person of life, liberty, or property, without due process of law.

STATEMENT OF THE CASE

a.) Procedural Posture

Petitioner Catherine Duerr was indicted on May 27, 1981, by the Hamilton County, Ohio Grand Jury. Duerr and two co-defendants were each charged with one count of aggravated murder. Petitioner was tried to a jury, with trial commencing on September 14, 1981, and was found guilty as charged. On November 17, 1982, the Ohio First District Court of Appeals affirmed appellant's conviction. On March 9, 1983, the Ohio Supreme Court released its decision refusing to review the case.

b.) Facts

On the evening of May 19, 1981, the Hamilton County Sheriff's Patrol received a phone call regarding a possible homicide at 7929 Asbury Hill Drive in the Anderson Township area of Hamilton County. Officers who responded to the scene found the body of Raymond Duerr on the second floor of the home. Mr. Duerr had been shot twice and was deceased. The patrol officers first on the scene at once called their superiors and several detectives responded to the scene. The time was approximately 8:30 p.m.

Initial investigation led the detectives to believe that a burglar had killed Mr. Duerr since the assailant had apparently kicked in a garage door to gain entrance, and had then been surprised by Mr. Duerr when he arrived home from work. Police continued to do a crime scene work-up at the Duerr residence during the evening, with Detective Hulgin, the officer in charge, having arrived on the scene at about 9:45 p.m.

Carol Duerr, the wife of the deceased and Cathy Duerr, step-daughter of the deceased, along with Cathy's boyfriend Dennis Goerler, had discovered the body and reported the crime. When the first officers arrived on the scene they had instructed these three to leave the scene and stay at a neighbors home until later. At about 11:00 p.m. Detective Hulgin went to the neighbors residence to speak to these three. Hulgin spoke to Carol Duerr for about an hour, in an effort to establish a time frame for the crime and to see if she could provide any information. (R 86) Hulgin spoke to Cathy Duerr for only about 10 minutes at this time, since she was laying down and was supposedly not feeling well. Other people, including Dennis Goerler, were in the room while Hulgin spoke to Cathy Duerr. Hulgin then spoke to Dennis Goerler for about 45 minutes, before leaving at about 1:00 a.m. (R 88) and returning to the Duerr residence, where he remained

until about 7:00 a.m. on the 20th, before going to the Sheriff's Patrol station on Hamilton Avenue. At this time the police has absolutely no suspects or leads.

During the early investigation and through the afternoon of May 20th, the police theory of the case gradually began to change. The police began to discard their original theory that a professional burglar had committed the crime. There were two reasons for this change. First it was felt a professional burglar would not be at work at the time the crime was committed, since late afternoon and early evening hours are most likely to find people at home. Secondly, it was felt that a professional burglar would only shoot once and then flee rather than pursuing the victim and shooting twice as was done here. For these reasons the police began to theorize that the crime was committed by a burglar who lived in the area, perhaps an amateur or a teen-ager, someone whom Mr. Duerr could have identified, and who for that reason felt compelled to kill him to prevent arrest. (R 90, 162) Detective Captain Henke of the Sheriff's Patrol explained the police theory of the case as of early on May 20th, 1981.

> "One, was the fact that the victim was shot twice. He was shot in one location, pursued to another location, and shot again. That is not, the normal burglar in our opinion would, if he would have to shoot somebody, would only shoot once and normally they would run to try to get away from somebody, out of the house, shoot once and run. It was our opinion at that point, the direction we were looking was possibly a neighborhood burglar, someone Mr. Duerr knew, and that's the reason he was shot twice, pursued. In other words, shot once in one location, pursued to another location and shot again. It was at that point we were pursuing a local burglar that was known to Mr. Duerr." (R 162)

* * * * *

> 'Well, one was the time frame. The professional burglar usually doesn't work in that time frame so that we felt, in other words, supper hour, professional burglars usually try to avoid that hour because lots of people coming and going home from work. That's one of the things that led us to believe possibly a juvenile or somebody in the neighborhood." (R 163)

At this time no one had ever considered Dennis Goerler, Carol Duerr or petitioner Cathy Duerr as suspects in this case. (R 49, 136, 138, 163)

After discussions on May 20th the police decided to reinterview Dennis Goerler and Carol and Cathy Duerr to see if they could develop some

leads as to this theory. A police officer called Carol Duerr and asked if she would drop by Patrol Headquarters for an interview and if Dennis Goerler and Cathy Duerr would come also. Carol Duerr was also interested in picking up some of her husband's property and she agreed to stop by with the others at about 6:00 p.m. (This other property was later found to have been turned over to the coroner and was not at the Hamilton Avenue Sheriff's station.) Detective Hulgin explained the reason for the interview as:

> "Detective Diersing requested Mrs. Duerr, Catherine Duerr, and Dennis Goerler respond to our Headquarters so that we may further interview those persons who may be able to provide us with certain information that could give us possible leads in the investigation." (R 48) See also R 143 and 145.

Dennis Goerler, Carol Duerr, and Catherine Duerr arrived at the Hamilton Avenue Sheriff's Patrol at 6:00 p.m. on the 20th in response to the police request to drop by for interviews.

When these three arrived the front door to the facility was locked, and they entered through the rear and were escorted to a waiting room. At this time Carol Duerr was told that the property she was seeking was not at the station. The waiting area where they were seated was described as follows:

> "A. You walk into a foyer, a large hall. Situated in this hallway several pieces of leather furniture, a couch, chairs, the stand with some magazines, and the ladies restroom is off of the hallway and off that hallway, back the other end of the building, were the headquarters, deputies, where persons are remanded.
>
> Q. This lounge area is like a separate room from the detective rooms or the clerk's room or the record room or what have you, Isn't that correct?
>
> A. Yes, sir, like a waiting room.
>
> Q. Like a waiting room and a person can come and go in that room as they please; isn't that correct?
>
> A. That's correct.
>
> Q. There are no detective stations out there, are there?
>
> A. No." (R 142)

The two Duerrs' and Goerler sat in this lounge alone from 6:00 p.m. until 6:45 p.m. At no time were they restrained of their liberty or denied freedom of movement, and during this initial period there were not even any police officers in the area.

At 6:45 p.m. Detective Hulgin asked Carol Duerr to talk to him in an interview room. Carol Duerr was not a suspect at this time and no Miranda warnings were given. This interview lasted from 7:00 p.m. until 8:30 p.m. Carol Duerr made no incriminating remarks at this time and she did not incriminate either Dennis Goerler or Cathy Duerr. At this time Carol returned to the lounge and shortly thereafter Cathy Duerr and Dennis Goerler were asked to enter different interview rooms. Detective Hulgin interviewed Cathy Duerr, and while this was going on defendant Goerler sat in another room and carried on a general conversation with some other officers. Defendant Goerler described that time period as follows:

> "A. All the time I was in the back room with them they talked about being married and divorced, Vietnam, different war zones, percentage of how many ex-G.I.'s or ex-Vietnamese veterans and policemen wind up getting divorced, and cars, just general talking.
>
> Q. Now you've characterized that as general conversation; is that correct?
>
> A. Yes, sir." (R 6)

At this time neither the Duerrs nor Goerler were suspects and they were not under arrest. During her interview Cathy Duerr said nothing which incriminated either Carol Duerr or Dennis Goerler.

At 10:45 p.m. Detective Hulgin began to interview Dennis Goerler. (R 64) At this time Goerler was not under arrest and would have been free to leave if he had wanted to. Likewise Carol and Catherine Duerr were not under arrest, and both were free to leave if they so desired. During the evening both Duerrs had freedom of movement and Carol Duerr made numerous phone calls to her mother, in which she indicated her own belief that she would be free to leave. Carol Duerr was also provided with food during the course of the evening. Petitioner Catherine Duerr spent much of her time sleeping. (R 190) At one point Cathy Duerr actually left the station alone and then returned. Petitioner Catherine Duerr was also provided with food during the course of the evening. Goerler was not a suspect at this time and the purpose of the interview was informational, an attempt to develop some leads in the Duerr homicide. (R 59) Goerler was not advised of his rights at the time the interview began. Shortly after entering the interview room Goerler told Hulgin that his stomach was bothering him and that his medicine was gone. (Goerler had brought some medicine with him but

had consumed it.) At this time Carol Duerr then left the police station alone and drove to a drug store, bought some medicine and brought it back to Goerler. The interview then continued after this. At about 12:20 a.m., during the interview, Goerler made a remark which Hulgin at once felt to be of a somewhat incriminating nature. (R 64, 65) At this time Hulgin orally advised Goerler of his Miranda rights. (R 64)

Hulgin then explained to Goerler why he was now suspicious of him and told him what possible charges he faced. Goerler then indicated that he would give a statement. (R 67) Hulgin also told Goerler that before Goerler said anything further he would like another officer to be present, (R 69), and Detective Diersing came into the room. At 12:50 a.m. Goerler executed a formal Miranda acknowledgement, and waiver form, in the presence of the two officers. Recording equipment was then set up and a recorded statement was then taken from Goerler. The first item that appears on the recorded statement is a readvisement and waiver of the Miranda rights. (See exhibit #1 at motion) In the body of this statement Goerler acknowleges his involvement in the Duerr homicide. He also incriminated both Carol and petitioner Cathy Duerr in a conspiracy to kill Raymond Duerr.

After Goerler gave his statement police officers then reinterviewed petitioner Cathy Duerr. She was advised of what Dennis Goerler had stated, and she was advised of her Miranda rights and signed a waiver form. At 4:21 a.m. petitioner Cathy Duerr then gave police a lengthy statement concerning her involvement in the Raymond Duerr homicide. During the course of this statement she incriminated both Dennis Goerler and Carol Duerr. This statement concluded at about 5:20 a.m. At no time did Cathy Duerr ever request an attorney.

The first portion of the taped statement is a readvisement of the Miranda warnings. Then the following appears:

> "Earlier Cathy you signed a waiver here that you understand those rights. You do understand all of your legal rights?
>
> D. Yes sir.
>
> L. And this signature waiving those rights for this interview is your signature?
>
> D. Yes sir.
>
> L. Were any promises or threats made to you in regard to your rights?
>
> D. No.

L. Okay, and you do wish to give us this statement, is that correct?

D. Yes."

When this statement concluded petitioner Catherine Duerr was arrested and charged with Aggravated Murder. Also charged were Dennis Goerler and Carol Duerr.

Petitioner Catherine Duerr was the last of the three co-defendants to be brought to trial. By the time her trial commenced both the co-defendants had been tried and convicted. Prior to trial defense counsel requested a change of venue. The trial court deferred ruling on this motion until after the voir dire of the jury. An initial pool of 30 jurors was brought in for voir dire. From this original pool the parties were able to successfully seat a jury and two alternates.

Six eventual jurors indicated that they were aware of the verdicts returned in the cases of the two co-defendants. Almost all jurors were aware of the general nature of the case. However, every juror selected specifically stated that this knowledge would not affect them in any way, and that they would judge the case solely on the evidence presented during trial. At one point defense counsel challenged the entire panel for cause, (R. 74-5) contending that their knowledge of the other cases should disqualify them. This was denied. At the time the jury selection was completed the motion for change of venue was denied.

REASONS FOR DENYING WRIT

I. THE FACT THAT POTENTIAL JURORS ARE AWARE OF THE NATURE OF THE CASE, AND THAT SOME ARE AWARE OF VERDICTS IN A CO-DEFENDANT'S CASE, DOES NOT DISQUALIFY THEM FROM JURY SERVICE. THE TEST FOR A CHANGE OF VENUE REMAINS THE ABILITY TO SEAT A FAIR AND IMPARTIAL JURY.

Petitioner Catherine Duerr contends that the trial court erred in denying her motion for change of venue and her challenge for cause of the entire jury panel. This issue presents a strictly legal question, since the facts are not in dispute. Essentially all the jurors were aware, in advance, of the nature of the case, and six of them knew of the verdicts in the trials of the co-defendants. However, all the eventual jurors without any equivocation, indicated they had no preconceived opinions; that they could be fair and impartial, and that they would try the case solely on the evidence presented at trial. Thus, the issue here is whether a juror's media gained knowledge of a case is per se grounds for disqualification. Appellee submits that the answer to this question is no.

Criminal Rule 24, Trial Jurors, sets forth the applicable Ohio procedure in regard to seating a jury. Section (B) of that rule provides in pertinent part, that:

> "(B) Challenge for cause. A person called as a juror may be challenged for the following causes:
>
> . . . . .
>
> (9) That he is possessed of a state of mind evincing enmity or bias toward the defendant of the state; but no person summoned as a juror shall be disqualified by reason of a previously formed or expressed opinion with reference to the guilt or innocence of the accused, if the court is satisfied, from the examination of the juror or from other evidence, that he will render an impartial verdict according to the law and the evidence submitted to the jury at the trial."

This rule thus provides that advance knowledge is not a grounds for disqualification as long as the court is satisfied that the juror can remain impartial. This is in accord with Ohio case law. State v. Wilson, 30 O.S. 2d 199, 283 N.E. 2d 632 (1972).

The bare fact of extensive pre-trial publicity and the jurors knowledge thereof does not call for a disqualification or a change of venue. The United States Supreme Court has often considered this issue. Thus in Murphy v. Florida, 432 U.S. 794, 95 S. Ct. 2031 (1975) and Dobbert v. Florida, 432 U.S. 282, 97 S. Ct. 2290 (1977) the court held that extensive pub-

licity, standing alone, even though as a result thereof the community is well aware of the charges, is not enough to require a change of venue. Dobbert involved particularly heinous crimes, much more severe than those in the present case. In Dobbert the Court stated:

> "(a) Petitioner's argument that the extensive coverage by the media denied him a fair trial rests almost entirely upon the quantum of publicity which the events received. He has directed us to no specific portions of the record, in particular the voir dire examination of the jurors, which would require a finding of constitution unfairness as to the method of jury selection or as to the character of the jurors actually selected. But under Murphy, extensive knowledge in the community of either the crime or the putative criminal is not sufficient by itself to render a trial constitutionally unfair. Petitioner in this case has simply shown that the community was made well aware of the charges against him and asks us on that basis to presume unfairness of constitutional magnitude at his trial. This we will not do in the absence of a 'trial atmosphere. . . utterly corrupted by press coverage'."

Applying these guidelines to the present case it is apparent that the trial court correctly declined to change venue.

In this case the trial court deferred ruling on the change of venue motion until after the voir dire process was completed.

This is the accepted method in Ohio for determining the necessity of a change of venue. State v. Bayless, 48 O.S. 2d 73, 357 N.E. 2d 1035 (1976); State v. Osborne, 50 O.S. 2d 211, 364 N.E. 2d 216 (1977); State v. Fairbanks, 32 O.S. 2d 34, 389 N.E. 2d 352 (1972). At the conclusion of the voir dire it was obvious that a fair and impartial jury had been selected. Not one juror equivocated in any fashion over his or her ability to be impartial. This is all that the law requires.

In support of her motion defendant submitted a collection of clippings which was represented as being the total print media coverage of this case. These clippings are contained in the record on appeal. An examination of these clippings reveal that they contain straightforward news accounts. They report only facts. They do not contain calls for conviction of this defendant. There is none of the "yellow journalism" found repugnant in Sheppard v. Maxwell, 384 U.S. 333, 86 S. Ct. 1507 (1966). Respondent submits that this type of press coverage will not justify a change of venue, and knowledge thereof is not a basis for disqualification of a juror.

II. WHERE THE RECORD DEMONSTRATES SCRUPULOUS POLICE ADHERENCE TO THE MIRANDA RIGHTS, AND FURTHER SHOWS THAT THE DEFENDANT WAS COURTEOUSLY TREATED AT ALL TIMES, THAT QUESTIONING WAS IN A NON-COERCIVE ATMOSPHERE, AND THAT WHILE AT THE POLICE STATION THE DEFENDANT WAS ACCOMPANIED BY HER MOTHER AND BOYFRIEND, THAT SHE WAS FED AND RETAINED FREEDOM OF MOVEMENT, THE ENSUING CONFESSION IS PROPERLY ADMITTED AT TRIAL.

Petitioner contends that the lower Court erred in overruling her motion to suppress her statements to police. Petitioner's arguments in this regard are based upon an assumption of facts which are not supported by the record. In many instances the facts here were in dispute at the motion to suppress (which was conducted jointly) with the three defendants claiming one thing and police officers testifying to the contrary. In resolving disputes such as this certain rules have gained wide spread acceptance at the appellate level. Thus it is generally held that the trier of fact is the sole judge of the credibility of witnesses and weight of the evidence. State v. Petro, 148 O.S. 463, 76 N.E. 2d 355 (1947); State v. Antill, 176 O.S. 61, 197 N.E. 2d 548 (1964). In this case the trial judge was the trier of fact at the motion to suppress. He chose to disbelieve the defendants and to believe the police testimony. This finding can not be challenged on appeal. Further, on appeal the evidence must be viewed in the light most favorable to the party which prevailed at trial. Burks v. United States, 437 U.S. 1, 98 S. Ct. 2141 (1978). In this case the state prevailed at the motion to suppress and is thus entitled to draw all necessary favorable inferences from the evidence presented there.

The facts present here show that the joint motion to suppress was properly overruled. Initially it should be noted that the strictures of Miranda were complied with, not once, but three separate times. Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602 (1966). Petitioner was advised of her rights orally, read and signed a written waiver form, and was advised on tape for all to hear. At no time did she ever request an attorney. In the latter two cases this is not even a dispute between police and defendant with no independant evidence. The Court can look at the written waiver, and listen to the tape, and observe that petitioner never requested counsel when she had the perfect opportunity to do so. The police here scrupulously adhered to the guidelines of Miranda. Petitioner argues that Miranda is only the starting point in a suppression case. This is not true here.

Where police demonstrate, convincingly, that proper procedures have been followed, the defendant must show some extraordinary factor to justify suppression.

Before dealing with the petitioner's specific complaints here it is important to set the background. A murder had just occurred. The police had no leads and no suspects. In homicides it is important to act at once; most homicides, if not solved quickly, are not solved at all. Because of this the police officers involved here were working round the clock, with little or no sleep. In order to develop leads they asked Carol Duerr, petitioner Cathy Duerr and Dennis Goerler to come in for interviews. These three were not at the police station as murder suspects. They were there playing the role of "bereaved" wife and daughter, cooperating with police in an effort to solve the murder of Raymond Duerr. That is why they came to the police station that evening, and that is why they cooperated by remaining there.

Regarding the events of the evening when the confession was obtained, the facts may be chronologically listed as follows:

1) Catherine Duerr, her mother and boyfriend arrive at the police station at 6:00 p.m. and are seated in lounge area until 7:00 p.m. No police present with them at this time.

2) Carol Duerr interviewed at about 7:00 p.m. She is not a suspect. During interview she does not incriminate anyone. Interview ends at 8:45.

3) Petitioner Catherine Duerr is interviewed. She is not a suspect and does not incriminate anyone. At conclusion of interview she returns to lounge and is with her mother.

4) Dennis Goerler interviewed. During course of evening petitioner Cathy Duerr spends time sleeping in lounge and talking to mother. She is provided with food. At one point she leaves alone and returns.

5) Dennis Goerler, during his interview gives confession, incriminating both Cathy and Carol Duerr. Goerler's statement is concluded after 2:00 a.m.

6) Cathy Duerr reinterviewed, commencing about 2:15 a.m., advised orally of her rights, later read waiver which she signed at 3:00 a.m. Again advised on tape prior to giving confession. Tape recorded confession commenced at 4:21 a.m. and concluded at 5:19 a.m.

During this entire time frame, from arrival until her interview at 2:15 a.m., Cathy Duerr was never arrested or led to believe she was under arrest. She was free to leave the police facility at all times, and in fact did leave at one time. (R. 185 motion to suppress) She was in a lounge area with her mother, she was provided with food and drink. She never requested an attorney, despite numerous opportunities to do so. The facts show a voluntary, truthful confession, and defendant apparently concedes the truthfulness, arguing only that it was involuntary.

(1) Petitioner argues that she was subjected to prolonged detention. This is not true. Petitioner was not in detention until after she gave her statement. She voluntarily came to the station to be interviewed, and at least until her co-defendants incriminated her, she was always free to leave. In fact, petitioner Catherine Duerr left alone and returned at one point. This could hardly be called detention. Petitioner was never in a cell, always in a lounge area, and her companions were with her or close by. Officer Datello sat with the Duerrs to keep them company, not to arrest them, and he never restrained them in anyway. The fact that the interview took place at a police station does not mean that detention occurred. Oregon v. Mathiason, 429 U.S. 492, 97 S. Ct. 711 (1977). In Mathiason, the Court stated:

> "In the present case, however, there is no indication that the questioning took place in a context where respondent's freedom to depart was restricted in any way. He came voluntarily to the police station, where he was immediately informed that he was not under arrest. At the close of a ½-hour interview respondent did in fact leave the police station without hindrance. It is clear from these facts that Mathiason was not in custody 'or otherwise deprived of his freedom of action in any significant way'."

Just because Carol Duerr was at a police station does not mean she was in detention. In State v. Barker, 53 O.S. 2d 135, 372 N.E. 2d 1324 (1978) the Ohio law of arrest was stated as follows:

> "1. The existence of an arrest is dependent not upon the fact that a suspect who voluntarily comes in for questioning concerning possible involvement in a murder is immediately given the Miranda warnings, nor upon the period of the questioning, but upon the existence of four requisite elements: (1) An intent to arrest, (2) under real or pretended authority, (3) accompanied by an actual or constructive seizure or detention of the person, and (4) which is so understood by the person arrested."

In the present case there was never any intent to arrest petitioner. There was no reason to even suspect her until after midnight, she was never physically arrested until after her statement, nor did she understand herself to be restrained. In sum, there was no prolonged detention here.

2) Petitione cites to Watts v. Indiana, 338 U.S. 49, 69 S. Ct. 1347 (1949) and similar cases to argue that the denial of food is a ground for suppression. Unfortunately for the petitioner this factor is not present here. Petitioner was provided with food. (R. 203) During the evening, around midnight, both petitioner and her mother were given a hamburger. During the course of the evening Carol Duerr consumed "drinks, crackers, soft drinks, coffee." Catherine Duerr did not ask for any more food. (R. 203) Quite simply there was no deprivation of food. In fact, she could have fed herself when she left the station alone.

3) Petitioner argues that she was without sleep for several hours. (R. 301) This of course, if true, was not the fault of the police. When the Duerrs arrived at the station they were treated comfortably and courteously. Each was seated in a lounge area and could have sleep if she wanted to. In fact, petitioner Catherine Duerr did sleep in the lounge area. The tape recorded statements here do not reveal defendants befudled by lack of sleep. Rather they reveal very alert coherent persons. Lack of sleep is not a factor here.

4) Petitioner contends she was ill while at the police station. (R. 185) Catherine Duerr never complained of illness to the police or demonstrated any sign of sickness. Ill ness simply was not a factor in this confession.

5) Finally petitioner indicates that the "leading"nature of the statement indicates that it is involuntary in nature. In fact the statement is not leading in nature, and is replete with fully explanatory answers. The questions are generally phrased so as to elicit explanations

rather than yes or no answers. In an effort to make this case fit in with lists of criteria found to be improper in other cases counsel simply asserts that such factors are present, when in fact they are not. From this false factual premise defense counsel then points to his long list of conjured up "violations" and argues in effect that where there is smoke there must be fire. In fact the only smoke present here is in appellant's brief, not in the record. There was no prolonged detention here. There was no denial of food or sleep. Petitioner was not ill, and never requested an attorney, and the statements are more narrative than leading in nature. The trier of fact obviously did not find any of the things defendants now complain of to be true, and his findings are supported by the record. Petitioner's claims here are without merit.

CONCLUSION

This case is not one which needs further judicial review. The record reveals that the jury selection process was conducted in a manner designed to ensure the selection of an impartial jury. The media coverage, which was proffered and made part of the record, was strictly factual in nature, with none of the "yellow journalism" which has been found offensive in the past. This Court's decisions in Dobbert and Murphy set forth the law applicable to this situation, and the lower courts actions and rulings are in conformity therewith. The confession issue raised here by petitioner is totally without merit. Petitioner was three times advised of her rights and signed a written waiver. She was voluntarily present at a police station, accompanied by her mother and boyfriend. She was treated courteously and provided food. During the whole period she retained freedom of movement, and at one point left the police station alone. This situation shows no illegality or coercion of any type. The petition for merit should be denied.

Respectfully,

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